



HOUSE BILL 1069: Unemployment Insurance Law Changes

2013-2014 General Assembly

Committee:	Finance, if favorable, Rules, Calendar, and Operations of the House	Date:	May 20, 2014
Introduced by:	Reps. Howard, Warren, Arp	Prepared by:	Greg Roney
Analysis of:	PCS to First Edition H1069-CSTMx-55		Committee Counsel

SUMMARY: *The PCS to House Bill 1069 would make the following changes to the unemployment insurance (UI) laws as recommended by the Joint Legislative Oversight Committee on Unemployment Insurance:*

- *Clarify that UI claim information is confidential unless the disclosure is permitted by federal regulation, and would exempt UI information from the public records disclosure requirements of Chapter 132 of the General Statutes.*
- *Validate higher-level appeal decisions made since November 1, 2011; create staggered terms for the members of the Board of Review; and change the appointment of the Board of Review members.*
- *Authorize the Division of Motor Vehicles (DMV) to disclose social security numbers to Division of Employment Security (DES) for the purpose of verifying employer and claimant identity; require UI claimants to contact 5 potential employers per week; eliminate the procedure to request reconsideration of DES decisions; and make other technical changes to modernize language and fix statutory references to DES.*
- *Clarify DES authority to garnish and attach the credit card receipts of delinquent taxpayers.*
- *Eliminate the variable range for UI duration and base the duration of UI benefits only on the unemployment rate. Under the proposal, all UI claimants would receive the maximum number of weeks of UI benefits currently allowed.*
- *Require photo identification to receive UI benefits.*

The PCS makes the following changes to the first edition of House Bill 1069:

- *Makes the authority to garnish and attach the credit card receipts of delinquent taxpayers in Part IV effective when the bill becomes law.*

[As introduced, this bill was identical to S759, as introduced by Sens. Rucho, Clark, which is currently in Senate Finance.]

CURRENT LAW, BILL ANALYSIS, AND EFFECTIVE DATE:

PART I: CONFIDENTIALITY OF UI INFORMATION

CURRENT LAW: The Employment Security Law, Chapter 96, currently provides for disclosure of UI information only as permitted or required by Federal regulations. UI information is not specifically exempted from the public records disclosure requirements of Chapter 132 of the General Statutes.

BILL ANALYSIS:

Section 1.(a) of the bill would define "confidential information" in G.S. 96-4(x) to mean:

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- Any information in the records of DES relating to the administration of the UI Law that is confidential under Federal regulations.
- Claim information as defined in the Federal regulations, including any information that might identify a claimant, employer, or employing unit in an UI matter.

This section would exempt confidential information from the public records disclosure requirements of G.S. Chapter 132. Finally, this section would amend G.S. 96-4(x) to authorize DES to disclose final decisions of appeals proceedings and the records of those hearings that led to the final decisions.

Section 1.(b) would amend G.S. 132-1.1 to exempt confidential UI information from the disclosure requirements of the Public Records Law.

Section 1.(c) of the bill would direct DES to take immediate action to comply with the provisions of the bill.

BACKGROUND: DES generates notices of hearing to inform claimants and employers in UI cases of the date and time of scheduled appeals before an Appeals Referee. In 2004, DES received a request under the Public Records Law for access to those notices, and DES began making the notices available on a daily basis to those who requested them and paid a fee as allowed under Chapter 132 of the General Statutes.

In February 2014, DES announced that the hearing notices would be made available only three times monthly and that the fee would be increased. A lawsuit¹ was filed in Wake County Superior Court, alleging that the agency's practice violated the Public Records Law. Subsequently, a temporary restraining order and preliminary injunction were issued, ordering DES to continue providing the notices of hearing until the case could be tried.

Confidentiality of UI information is governed by Federal regulations at 20 C.F.R. Part 603. After learning of the agency's practice, in a letter dated March 7, 2014, the US Department of Labor (USDOL) officially notified DES that it must cease providing the hearing notices.² USDOL stated that such disclosure constitutes a failure to comply with Federal laws and regulations relating to confidentiality of UI information. The USDOL letter states that State law conforms to Federal requirements, but that the DES practices did not comply with Federal law. The letter also stated that continuing to provide the notices would jeopardize the State's receipt of Title III grant funds, which funds the administrative operations of the State's UI program.

USDOL sent a follow-up letter to DES on April 25, 2014,³ reiterating its position that DES practice of providing notices of UI appeals hearings raises "several issues of substantial compliance with Federal law requirements," and again instructing DES to immediately cease that practice. The USDOL letter stated that "[t]o be in substantial compliance with Federal law, DES must cease the practice of providing notice of appeals hearings to attorneys who do not already represent a claimant or an employer, and provide assurances that the practice has stopped and will not be resumed," and that DES must request that recipients of confidential UI information either destroy that information or return it to DES. The USDOL made clear that "DES has an affirmative duty to explore all avenues to comply with Federal law, including through the court system with the current proceedings, but also potentially via legislative remedy...." USDOL recommended that although the provisions of G.S. 96-4(x) conform to Federal law

¹ Monica Wilson and Wilson Law Group PLLC v. North Carolina Department of Commerce; NC Department of Commerce, Division of Employment Security; Sharon Allred Decker, in her capacity as Secretary of Commerce; and Dale R. Folwell, in his capacity as Assistant Secretary of Employment Security, Wake County General Court of Justice 14 CvD 2499 (filed Feb 28, 2014).

² Letter dated March 7, 2014, from Gay M. Gilbert, Administrator, Office of Unemployment Insurance, U.S. Department of Labor.

³ Letter dated April 25, 2014, from Gay M. Gilbert, Administrator, Office of Unemployment Insurance, U.S. Department of Labor.

and regulations, the State's Public Records Law should be amended to exempt UI information from public records disclosures.

PART II: BOARD OF REVIEW FOR UNEMPLOYMENT INSURANCE

CURRENT LAW: USDOL encourages states to have a second level of review for decisions and determinations made by DES, but it does not require one. The General Assembly created a Board of Review⁴ to determine appeals policies and procedures and to hear appeals arising from the decisions and determinations of the Lower Appeals Department of DES. The Board consists of three members⁵ appointed by the Governor and confirmed by the General Assembly: one member representing employers, one member representing employees, and one member representing the general public.⁶ The member representing the general public is designated as the chair of the Board and must be a licensed attorney.

Beginning November 1, 2011, the UI laws provided a second level of appeal to an impartial Board of Review. However, the Board was not appointed until December 6, 2013. In the absence of a Board, the Assistant Secretary of Commerce for DES, or the Secretary of Commerce's designee, provided parties with the second level of review that the statute vested in the Board of Review.

In a case before the Superior Court in Rowan County, the Court noted that the Assistant Secretary of Commerce for DES did not have the statutory authority to make those decisions. According to the testimony in the case,⁷ there may have been 13,000 lower level decisions appealed to the second level of review prior to the Governor's appointment of the Board of Review.

BILL ANALYSIS: The bill addresses two issues: the validation of higher-level appeal decisions made since November 1, 2011, and the appointment of the members to the Board of Review.

A party who does not agree with a DES decision or determination may seek redress in the Superior Court. The failure to provide a second level of review in the form required by the statute (i.e., by a properly constituted Board of Review) does not harm a party who disagrees with a decision because the party has the ability to appeal to Superior Court.

Section 2 of the bill validates the second level appeals decisions made since November 1, 2011, in two ways:

- Provides that a decision made by the Assistant Secretary of Commerce for DES or the Secretary of Commerce's designee is validated and given the same legal effect as if the decision had been issued by the Board of Review.
- Removes any ambiguity concerning the proper constitution of the Board of Review by changing the date by which the Governor could make the initial appointments without confirmation by the General Assembly from September 1, 2013, to January 1, 2014.

Section 3 of the bill changes the appointment of the Board of Review members and provides for staggered four-year terms. The bill provides that the terms begin on July 1 and end on June 30 of the fourth year. A member of the Board of Review may not continue to serve until a successor is appointed. Under the bill, two members will be appointed by the General Assembly: one upon the recommendation of the Speaker of the House and one upon the recommendation of the President Pro Tempore of the Senate. The third member will be appointed by the Governor. The Governor's appointment will need to

⁴ S.L. 2011-401.

⁵ G.S.96-4(b).

⁶ The Governor made the following appointments to the Board of Review: Keith Holliday, representing employers; Stanley Campbell, representing employees; and Jeanette Doran, representing the general public.

⁷ Wesley A. Lane v. N.C. Department of Commerce, Division of Employment Security, Rowan County Superior Court 13 CvS 1109.

be confirmed by the General Assembly in accordance with the nomination and confirmation process set forth in G.S. 14-16.3.⁸

The Governor's appointee will be the chair of the Board; that member must be a licensed attorney and must represent the general public. One of the General Assembly's appointments, the one representing employers, will be made upon the recommendation of the President Pro Tempore. The other appointment, the one representing employees, will be made upon the recommendation of the Speaker.

To achieve the staggered terms, the terms of the existing Board members are as follows:

- The term of the member representing employers will expire June 30, 2014.
- The term of the member representing employees will expire June 30, 2015.
- The term of the member representing the general public will expire June 30, 2017.

BACKGROUND: The General Assembly created the Board in S.L. 2011-401, but failed to set the salaries for the Board members. The Current Operations and Capital Improvements Appropriations Act of 2012, S.L. 2012-142, set the salaries for the Board members.⁹ Although the budget became law on July 2, 2012, the appointments to the Board had not been made by June of 2013.

In recognition that the appointments would not be made prior to the adjournment of the 2013 Session, the General Assembly enacted the one-time exception to the confirmation process in S.L. 2013-224. In S.L. 2013-224, the General Assembly directed the Governor to make the appointments to the Board by September 1, 2013, and provided that the appointments made under the authority of this legislation would not require confirmation. The Governor made the appointments outside the time allowed by S.L. 2013-224 on December 6, 2013.

PART III: AUTHORIZING DMV TO DISCLOSE SOCIAL SECURITY NUMBERS; REQUIRING UI CLAIMANTS TO CONTACT 5 POTENTIAL EMPLOYERS PER WEEK; AND ELIMINATING THE PROCEDURE TO REQUEST RECONSIDERATION OF DECISIONS.

CURRENT LAW: G.S. 20-7(b2) authorizes DMV to disclose social security numbers to a list of State entities subject to federal limitations. DMV obtained the social security numbers when a person applied for an identification card, learners permit, or driver's license.

G.S. 96-14.9(e) requires UI claimants to actively search for work while receiving UI benefits. The claimant must make 2 job contacts with potential employers on 2 different days during a week.

G.S. 96-15(h) provides a procedure for parties to any decision of DES to request reconsideration of the decision. The decision is not final until the request for reconsideration has been decided.

BILL ANALYSIS: Section 4 would add DES to the list of State entities authorized to receive social security numbers from DMV. The social security numbers are disclosed for the purpose of verifying employer and claimant identity.

Section 5 would make a technical change to move the date for the calculation of tax rates for certain employers from July 31 to June 30. The calculation is based on a 12-month period, and June 30 is the end of the calendar quarter.

Section 6 would modify the work search requirement by increasing the number of job contacts to 5 per week and eliminating the requirement to search on 2 different days.

⁸ G.S. 147-16.3 provides that an appointment for an odd-numbered year should be made by May 15 and an appointment for an even-numbered year should be made by June 7. If an appointment is not timely made, then the nominee may serve on an interim basis until the convening of the next regular session.

⁹ The chair receives an annual salary of \$122,255 and the remaining two members receive an annual salary of \$120,737.

Section 7 would eliminate the procedure to request reconsideration of decisions of DES and modernize the language of G.S. 96-15(h).

Section 8 would correct 3 references to DES.

EFFECTIVE DATE: Section 5 would be effective for contributions payable for calendar quarters beginning on or after January 1, 2014. Sections 6 and 7 would be effective July 1, 2014.

PART IV: GARNISHMENT AND ATTACHMENT FOR THE COLLECTION OF UNPAID UI TAXES

CURRENT LAW: DES is authorized by G.S. 96-10(b) to bring civil actions to collect delinquent UI taxes. G.S. 1-359 governs the manner in which debtors of a judgment debtor may satisfy an execution.

BILL ANALYSIS: The bill clarifies DES authority to use attachment and garnishment of credit card receipts to satisfy a judgment for unpaid employment taxes.

Section 9.(a) amends G.S. 1-359 to specifically allow DES to execute a judgment by attaching or garnishing a delinquent employer's credit card receipts and then receiving those funds directly from a credit card company or clearinghouse in discharge of the debt.

Section 9.(b) clarifies that, under G.S. 96-10(b)(1), DES may garnish or attach credit card receipts due an employer using the process for execution authorized by new G.S. 1-359(b) to receive direct payment.

BACKGROUND: DES is responsible for collecting unemployment taxes from employers who fail to remit unemployment tax payments. DES may use the same forms of execution available to any other judgment creditor who prevails against a defendant. Obtaining payment from a debtor's debtor is one such method.

PART V: SET THE DURATION OF UNEMPLOYMENT BENEFITS BASED ONLY ON UNEMPLOYMENT RATES

CURRENT LAW: The duration of UI benefits is determined based on a formula in G.S. 96-14.4 and a table in G.S. 96-14.3.

The formula in G.S. 96-14.4 was designed to reward UI claimants who have a higher attachment to the workforce by comparing base period wages and wages in the last 2 quarters. The formula resulted in some UI claimants receiving less than the maximum number of weeks of UI benefits allowed under the table.

The table in G.S. 96-14.3 gives the minimum and maximum number of weeks an individual is allowed to receive UI benefits depending on the seasonal adjusted statewide unemployment rate that applies to the six-month period in which the claim is filed.¹⁰ The table follows:

¹⁰ One six month base period begins on January 1 and one six month base period begins on July 1. For the base period that begins January 1, the average of the seasonal adjusted unemployment rates for the State for the preceding months of July, August, and September applies. For the base period that begins July 1, the average of the seasonal adjusted unemployment rates for the State for the preceding months of January, February, and March applies.

Seasonal Adjusted Unemployment Rate	Minimum Number of Weeks	Maximum Number of Weeks
Less than or equal to 5.5%	5	12
Greater than 5.5% up to 6%	6	13
Greater than 6% up to 6.5%	7	14
Greater than 6.5% up to 7%	8	15
Greater than 7% up to 7.5%	9	16
Greater than 7.5% up to 8%	10	17
Greater than 8% up to 8.5%	11	18
Greater than 8.5% up to 9%	12	19
Greater than 9%	13	20

BILL ANALYSIS: The bill would eliminate the variable range for the duration of UI benefits and pay all UI claimants based on the maximum number of weeks currently allowed. The bill also makes conforming changes to statutory cross-references.

BACKGROUND: S.L. 2013-2 (House Bill 4), UI Fund Solvency & Program Changes, reduce the maximum duration of regular UI benefits from 26 weeks to 20 weeks and tied the duration of UI benefits to the seasonal adjusted unemployment rate under a table. S.L. 2013-2 did not change the formula setting a variable number of weeks based on attachment to the workforce. The interaction of the existing formula and the new table does not reduce benefits below 17 weeks – making the minimum number of weeks in the table inoperable below 17 weeks. The bill would remove the variable range and place all UI claimants at the maximum duration.

EFFECTIVE DATE: Part V of the bill would be effective July 1, 2014 and apply to claims for UI benefits filed on or after July 1, 2014.

PART VI: REQUIRE PHOTO IDENTIFICATION TO RECEIVE UI BENEFITS

CURRENT LAW AND BACKGROUND: DES administratively requires UI claimants present photo identification before receiving services. DES imposed the photo identification requirement to address fraudulent UI claims and create an audit trail. The photograph is evidence of the individual who committed fraud and aids prosecution of criminal offenses.

USDOL supports program integrity measures such as requiring photo identification. USDOL provided a staff opinion that photo identification is a permissible eligibility requirement for UI claimants as part of the requirement to report to DES.

BILL ANALYSIS: The bill would add a new, statutory eligibility requirement to receive UI benefits that claimants must present photo identification. Valid photo identification requires the individual's photograph and must be one of the following documents:

- A driver's license, learner's permit, provisional license, or nonoperators identification card issued by North Carolina, another state, the District of Columbia, United States territory, or United States commonwealth.
- A United States passport.
- A United States military identification card.
- A Veterans Identification Card issued by the United States Department of Veterans Affairs.
- A tribal enrollment card issued by a federally recognized tribe.
- Any other document issued by the United States or any state that the Division determines adequately identifies the individual.

PART VII: EFFECTIVE DATE

Except as otherwise provided in Parts III and V, the PCS would be effective when it becomes law.

Cindy Avrette and Janice Paul with the Research Division and Phyllis Pickett with the Bill Drafting Division substantially contributed to this summary.